NOSSAMAN LLP
CHRISTOPHER D. HUGHES (SBN 254864)
chughes@nossaman.com
621 Capitol Mall, 25th Floor
Sacramento, CA 95814
Telephone: 916.442.8888
Facsimile: 916.442.0382

Attorneys for Kimberly J. Husted,
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re DIVINDER KAUR HUNDAL, Debtor.	Case No: 16-25239-D-7 DCN: NOS-004 **TRUSTEE'S MOTION FOR AUTHORITY TO SELL PERSONAL PROPERTY OWNED BY THE ESTATE FREE AND CLEAR OF LIENS AND TO APPROVE OVERBID PROCEDURES** Date: April 12, 2017 Time: 10:00 a.m. Dept: D (Courtroom 34)

To THE HONORABLE ROBERT S. BARDWIL, United States Bankruptcy Judge

Kimberly Husted, the duly appointed Chapter 7 Trustee ("Trustee") for the bankruptcy estate of Divinder Kaur Hundal ("Debtor"), hereby submits this Motion for Authority to Sell Personal Property Free and Clear of Liens and to Approve Overbid Procedures ("Motion"). The Motion is brought pursuant to sections 363(b) and 363(f) of Title 11 of the United States Code, as amended (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Motion is supported by the Declaration of Kimberly Husted ("Husted Declaration"), submitted herewith.

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Relief Requested

1. The Trustee seeks an order approving the following relief provisions:

A. Authorizing the Trustee to sell a vehicle, described in more detail below, free and clear of liens;

B. Authorizing the Trustee to sell the vehicle to West Coast Connection for $28,000 or to the highest bidder at the hearing on the Motion;

C. Approving an overbidding procedure at the hearing to permit qualified buyers who appear at the hearing, with a cashier's check for $500 as a deposit, to bid on the vehicle;

D. Authorizing the Trustee to sell and convey title to the vehicle and to execute any and all documents necessary to transfer title of the vehicle to the new buyer; and

E. For any other relief as is just and appropriate under the circumstances of this case.

Jurisdiction and Venue

2. The Court has jurisdiction over this matter. 28 U.S.C. §§ 157 and 1334. The District Court has referred this matter to the Bankruptcy Court. 28 U.S.C. § 157(a) and United States District Court, Eastern District of California, General Orders 182 and 223. This is a core proceeding. 28 U.S.C. § 157(b)(2)(N). Venue is proper in this district. 28 U.S.C. §§ 1408 and 1409.

Facts

3. On August 10, 2016 ("Petition Date"), Divinder Kaur Hundal ("Debtor") filed her voluntary petition for relief under the Bankruptcy Code, initiating the above captioned bankruptcy case ("Bankruptcy Case"). [Docket No. 1]. Ms. Husted was subsequently appointed as the Chapter 7 Trustee and is acting solely in her capacity as the court-appointed Chapter 7 Trustee, and not as an individual. [Docket No. 2].

4. On August 10, 2016, Debtor filed Schedules ("Original Schedules") and a Statement of Financial Affairs ("Original SOFA") with the petition for relief. [Docket No. 1].

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5. On September 21, 2016, Debtor filed Amended Schedules ("First Amended Schedules"). [Docket No. 20]. Debtor's First Amended Schedules identified numerous assets that were not previously disclosed on the Original Schedules. These assets include a 2014 Dodge Ram 3500 Truck (the "Truck"). The First Amended Schedules state that the Truck has approximately 18,000 miles and has a value of $23,000. Debtor did not file amended schedules reflecting how much is owed on the loan secured by the Truck.

6. There is a lien against the Truck in favor of Sierra Central Credit Union, securing a loan obtained by the Debtor's non-filing spouse. At this time, Trustee is informed and believes that the loan balance is approximately $22,720.

7. On December 16, 2016, Debtor filed a second set of Amended Schedules ("Second Amended Schedules"). [Docket No. 60]. No exemption is listed for the Truck on the Debtor's First Amended Schedules or Debtor's Second Amended Schedules.

8. On December 21, 2016, the Trustee filed a motion to compel turnover of the Truck, among other things. [Docket No. 62].

9. On January 18, 2017, a hearing was held on the Trustee's motion to compel turnover of the Truck. The Court continued the hearing two weeks to February 1, 2017, so the Debtor could have time to file a motion to compel the Trustee to abandon the Truck. [Docket No. 83].

10. On January 18, 2017, Debtor filed a third set of Amended Schedules ("Third Amended Schedules"). [Docket No. 76]. The Third Amended Schedules now lists the Truck with an $8,000 exemption, under section 703.140(b)(6) of the California Code of Civil Procedure (tools of trade of the Debtor), and a $4,000 exemption, under section 703.140(b)(5) (the wild card exemption). [Docket No. 76].

11. On February 1, 2017, at the hearing, the Court granted the Trustee's Motion for Turnover. [Docket No. 88]. An order granting the motion was entered on February 2, 2017 [Docket No. 90].

12. The Trustee has viewed and evaluated the Truck. The Trustee believes it is in the best interests of the Estate to sell the Truck.

13. The Trustee solicited a West Coast Connection representative to provide an offer to purchase the Truck. The Trustee received an offer and negotiated the following sale.

The Proposed Sale

14. The Trustee has negotiated a sale of the Truck to West Coast Connection ("WCC") for $28,000. The sale will be "as is" "where is" "with all faults", and without any representation or warranty, express or implied.

15. The sale will be free and clear of liens against the Truck, including the lien held by Sierra Central Credit Union.

16. WCC has provided the Trustee with a refundable deposit of $500. However, the Trustee and WCC have agreed that they will both continue to market the Truck in an attempt to ensure the Estate obtains the highest value for the Truck. Additionally, the Truck is listed for sale on WCC's website. WCC has agreed to hold the Truck on its sales lot on Fulton Avenue, allow interested potential over bidders to see and inspect the Truck, and will advise those interested persons of the sale hearing. An information sheet will be provided to interested buyers instructing them of the procedure to bid on the Truck at the hearing and to contact the Trustee so she is aware of potential bidders.

17. The Trustee and WCC have further agreed that should WCC be outbid at the sale hearing through the procedure described in more detail below, the Estate will refund the $500 deposit to WCC and will pay WCC, from the proceeds of the sale of the Truck, a breakup fee of $500 as compensation for storage and marketing activity provided in advance of the hearing.

The Proposed Overbid Terms

18. The sale of the Truck will be subject to overbids. Any person or entity wanting to overbid the current offer of $28,000 for the Truck at the time of the hearing is free to do so, provided they present the Trustee with a $500 cashier's check as a deposit. Pursuant to the agreement with WCC, the first offer to overbid must be for at least $29,000 (i.e. $1,000 more than the current offer). From there on, the Trustee suggests overbids in the minimum amount of $500. Within five days of entry of a court order authorizing the sale of the Truck, the successful

overbidder shall pay to the Trustee the balance of the successful bid amount. The Trustee will refund the deposit of any unsuccessful bidder.

Argument

A. The Proposed Sale Satisfies the Requirements of Section 363(b).

After proper notice has been provided and upon the conclusion of a hearing, the Court may authorize the Trustee to sell property of the estate. 11 U.S.C. § 363(b). Courts analyzing a proposed sale typically analyze whether the sale is in the best interests of the estate, based on the facts and history of the case. *In re American West Airlines*, 166 B.R. 908, 912 (Bankr. D. Ariz. 1994) (*citing In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). Courts must examine the "business justification" for the proposed sale. *In re Wilde Horses Enterprises, Inc.* 136 B.R. 380 (Bankr. C.D.Cal. 1991) (*citing In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). The trustee has "broad power" under section 363 to sell property of the estate and "the manner of sale is within the discretion of the Trustee." *In re The Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

The Trustee believes that the sale of the Truck is in the best interests of the Estate. The sale to WCC will realize a benefit to the Estate in excess of the liens against it. Further, as noted in the Trustee's motion to extend the deadline to object to Debtor's exemptions (DCN: NOS-4), the Trustee intends to object to the Debtor's exemptions associated with the Truck.

B. The Proposed Sale Satisfies the Conditions for a Sale Free and Clear of Liens.

After proper notice is provided and upon the conclusion of a hearing, the Court may authorize the Trustee to sell assets free and clear of liens, claims, interest, and encumbrances if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Since section 363(f) is written in the disjunctive, satisfaction of any one of the conditions is sufficient for a court to authorize the sale. *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986).

Here, the Trustee believes that one or more of the conditions of section 363(f) will be satisfied through the sale of the Truck to WCC or an over bidder. To the extent there is a valid lien on the Truck, the Trustee will pay the amount of the lien from the sale proceeds of the Truck. Based on the information available to the Trustee, the price at which such property is to be sold (i.e. at least $28,000) is greater than the value of all liens on such property (i.e. no more than $23,000).

C. Waiver of Bankruptcy Rule 6004(h) is Appropriate.

Pursuant to Rule 6004(h) of the Bankruptcy Rules, an "order authorizing the use, sale or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The purpose of the rule is to permit sufficient time for an objecting party to appeal the decisions. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). However, the court may eliminate the stay to allow a sale or other transaction to close immediately.

The Trustee respectfully requests that the Court order that the 14-day stay period set forth in Bankruptcy Rule 6004(h) is waived in connection with the proposed sale of the Truck.

Notice

Notice of this Motion has been provided to the Debtor, the Debtor's attorney, the purported holders of liens against the Truck, all creditors, and the Office of the United States Trustee, to the extent required by the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the Eastern District of California, and those persons who have formally appeared and requested service in this case pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Trustee submits that no further notice of this Motion is necessary.

Conclusion

WHEREFORE, the Trustee respectfully requests that this Court enter an order:

1. Authorizing the Trustee to sell the Truck free and clear of liens;

2. Authorizing the Trustee to sell the Truck to West Coast Connections or to the highest over bidder at the hearing on the Motion;

3. Approving the overbid procedures described herein;

4. Authorizing the Trustee to sell and convey title to the Truck and to execute any and all documents necessary to transfer title of the Truck to the new buyer; and

5. Granting the Trustee such other and further relief as is just and proper.

Date: March 14, 2017

NOSSAMAN LLP

By: /s/ Christopher D. Hughes
Christopher D. Hughes, Attorney for Kimberly Husted, Chapter 7 Trustee